

ARIZONA HOUSE OF REPRESENTATIVES  
Fifty-second Legislature – Second Regular Session

MINUTES RECEIVED  
CHIEF CLERK'S OFFICE

2-23-16

**COMMITTEE ON BANKING AND FINANCIAL SERVICES**

Report of Regular Meeting  
Tuesday, February 16, 2016  
House Hearing Room House Hearing Room 3 -- 2:00 p.m.

**Convened** 4:28 p.m.

**Recessed**

**Reconvened**

**Adjourned** 4:56 p.m.

**Members Present**

Mr. Allen  
Mr. Espinoza  
Mr. Farnsworth E.  
Mrs. Gabaldon  
Ms. McCune Davis  
Mrs. Norgaard  
Mr. Weninger, Vice-Chairman  
Mrs. Brophy McGee, Chairman

**Members Absent**

**Agenda**

Original Agenda – Attachment 1

**Request to Speak**

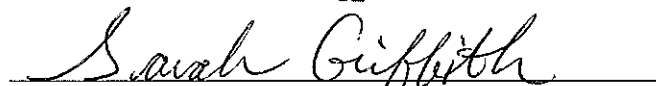
Report – Attachment 2

**Presentations**

<b><u>Name</u></b>	<b><u>Organization</u></b>	<b><u>Attachments (Handouts)</u></b>
None		

**Committee Action**

<b><u>Bill</u></b>	<b><u>Action</u></b>	<b><u>Vote</u></b>	<b><u>Attachments (Summaries, Amendments, Attendance)</u></b>
HB2467	DPA	7-1-0-0	3, 4, 5
HB2555	DPA	8-0-0-0	6, 7, 8
HB2592	DP	8-0-0-0	9, 10, 11
	Committee Attendance		12

  
Sarah Griffith, Chairman Assistant  
February 23, 2016

(Original attachments on file in the Office of the Chief Clerk; video archives available at <http://www.azleg.gov>)

Conv: 4:28 p.m.

ARIZONA HOUSE OF REPRESENTATIVES  
Fifty-second Legislature - Second Regular Session

Adj: 4:56 p.m.

REGULAR MEETING AGENDA

**COMMITTEE ON BANKING AND FINANCIAL SERVICES**

DATE Tuesday, February 16, 2016

ROOM HHR 3

TIME 2:00 P.M.

Members:

Mr. Allen J  
Mr. Espinoza  
Mr. Farnsworth E

Mrs. Gabaldón  
Ms. McCune Davis  
Mrs. Norgaard

Mr. Weninger, Vice-Chairman  
Mrs. Brophy McGee, Chairman

Bills	Short Title	Strike Everything Title
HB2467	<u>DPA</u> fiduciary access to digital assets (Brophy McGee, Driggs, Worsley, et al)	
	<u>7-1-0-0</u> BFS, RULES	
HB2555	<u>DPA</u> judgment liens; recorded information statement (Weninger)	
	<u>8-0-0-0</u> BFS, RULES	
HB2592	<u>DP</u> nonprofit corporations; electronic voting (Ackerley, Thorpe)	
	<u>8-0-0-0</u> BFS, RULES	

**ORDER OF BILLS TO BE SET BY THE CHAIRMAN**

SG  
2/11/16

People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.

Attachment 1

# Information Registered on the Request to Speak System

*House Banking and Financial Services (2/16/2016)*

## **HB2467, fiduciary access to digital assets**

### **Testified in support:**

Timothy Berg, representing self

### **Support:**

Jay Kaprosy, Arizona Bankers Association; Steven Zylstra, representing self; Brian Murray, GOOGLE INC

### **All Comments:**

Steven Zylstra, Self: The Arizona Technology Council supports this bill.

## **HB2555, judgment liens; recorded information statement**

### **Support:**

Larry Phelps, LAND TITLE ASSOCIATION OF AZ

## **HB2592, nonprofit corporations; electronic voting**

### **Support:**

Nick Debus, CHANDLER CHAMBER OF COMMERCE

### **Neutral:**

Leonard Clark Clark, representing self



# HOUSE OF REPRESENTATIVES

HB 2467

fiduciary access to digital assets

Prime Sponsor: Representative Brophy McGee, LD 28

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X Committee on Banking and Financial Services

Caucus and COW

House Engrossed

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## OVERVIEW

HB 2467 adopts the Revised Uniform Fiduciary Access to Digital Assets Act (Act) as developed by the Nation Conference of Commissioners on Uniform State Laws which governs the disclosure of certain types of digital assets.

## PROVISIONS

### *Applicability*

1. Applies the Act, after the date of enactment, to the following:
  - a. A fiduciary acting under a will or power of attorney,
  - b. A personal representative acting for a decedent who is deceased,
  - c. A conservatorship proceeding,
  - d. A trustee acting under a trust, and
  - e. A custodian, if the user resides or has resided in this state at the time of the user's death.
2. Exempts a digital asset of an employer used by an employee in the ordinary course of the employer's business from the Act.

### *User Direction for Disclosure*

3. Allows a user to use an online tool to direct the custodian to disclose some or all of the user's digital assets.
4. Stipulates that a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, or other record, if the online tool allows the user to modify a direction at all times.
5. States the user may allow or prohibit disclosure to a fiduciary of some or all of the user's digital assets, if the user has not used or if the custodian has not provided an online tool.
6. Asserts the user's direction overrides a contrary provision in a terms-of-service agreement that does not requires the user to act affirmatively and distinctly from the user's assent.

### *Procedure for Disclosure*

7. Authorizes a custodian, when disclosing digital assets, to do any of the following:
  - a. Grant a fiduciary full access to the user's account or partial access sufficient enough to perform any charged tasks.
  - b. Provide a fiduciary a copy in a record of any digital asset that the user could have accessed if the user were alive and had full access to the account.
8. Allows a custodian to charge a reasonable fee for the cost of disclosing digital assets.
9. Specifies a custodian does not need to disclose a deleted digital access.

10. Stipulates that if a direction or request to disclose some of the user's digital assets would impose an undue burden on the custodian in the segregation of the assets, the custodian does not need to disclose the assets.
  - a. The custodian or fiduciary may seek a court order to disclose any of the following:
    - i. A subset limited by date of the user's digital assets,
    - ii. All of the user's digital assets to the fiduciary,
    - iii. None of the user's digital assets, or
    - iv. All of the user's digital assets to the court for review in camera.

*Disclosure of Digital Assets*

11. Stipulates that, if a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian must disclose the content to the personal representative of the user provided the representative gives the custodian certain specified information relating to the user.
12. Requires a custodian to disclose, unless the user prohibited disclosure or the court directs otherwise, a catalogue of electronic communications by the user and digital assets, other than the content of electronic communications of the user, if the representative gives the custodian certain specified information relating to the user.
13. Requires a custodian to disclose the content, to the extent a power of attorney grants an agent authority over the content of electronic communications by the principal and unless directed otherwise by the principal or the court, to the agent provided the agent gives the custodian certain specified information.
14. Requires a custodian to disclose, unless otherwise ordered by the court, directed by the principal to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications by the principal and digital assets, other than the content of electronic communications, of the principal provided the agent gives the custodian certain specified information.
15. Stipulates that a custodian must disclose any digital asset of the account held in trust to a trustee that is an original user of an account, unless otherwise ordered by the court or provided in a trust.
16. Requires a custodian to disclose, unless ordered or directed otherwise, the content of an electronic communication by an original or successor user and carried, maintained, processed, received or stored by the custodian in the account of the trust to a trustee that is not an original user of an account, if the trustee gives the custodian.
17. Requires a custodian to disclose, unless ordered or directed otherwise, a catalogue of electronic communications by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest to a trustee that is not an original user of an account, if the trustee gives the custodian certain specified information.
18. Authorizes a conservator access to the digital assets of a protected person after a court hearing.
19. Stipulates that a custodian must disclose, unless ordered or directed otherwise, the catalogue of electronic communications by a protected person and any digital assets, other than the content of electronic communications, which the protected person has a right or interest to a conservator provided that the conservator gives the custodian certain specified information.

20. Allows a conservator to request a custodian of the digital assets of a protected person to suspend or terminate an account of the protected person for good cause.

*Fiduciary Authority*

21. Asserts the legal duties imposed on a fiduciary apply to the management of digital assets.
22. States a fiduciary's authority with respect to a digital asset of a user: 1) is subject to the applicable terms of service, 2) is subject to other applicable laws, 3) is limited by the scope of the fiduciary's duties, and 4) cannot be used to impersonate the user.
23. Asserts a fiduciary has the right to access any digital asset of a decedent, protected person, principal or settlor in which the fiduciary has the authority over.
24. Specifies a fiduciary acting within the scope of their duties is an authorized user of property for the purpose of applicable computer-fraud laws.
25. Specifies a fiduciary with authority over the tangible, personal property of a decedent, protected person, principal or settlor:
- a. Has the right to access the property, and
  - b. Is an authorized user for the purpose of computer-fraud laws.
26. Allows a custodian to disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.
27. Allows a fiduciary to request a custodian to terminate the user's account.
- a. The request must be in writing and be accompanied by certain specified information.

*Miscellaneous*

28. Asserts the Act:
- a. Does not change or impair a right of a custodian or a user under an agreement to access and use digital assets of the user.
  - b. Does not give a fiduciary any new or expanded rights other than those held by the user for whom the fiduciary represents.
29. States the fiduciary's access to digital assets may be modified by a user, federal law, or a terms-of-service agreement, if the user has not provided direction.
30. Requires a custodian to comply with a request under the Act from a fiduciary to disclose digital assets or terminate an account within 60 days.
- a. A fiduciary may apply for a court order for noncompliance.
  - b. The court order must contain a finding stating the compliance is violating federal law regarding voluntary disclosure of customer communications or recorders.
31. Authorizes a custodian to notify the user that a request for disclosure or to terminate an account was made under the Act.
32. Allows a custodian to deny a request from a fiduciary for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account.
33. States the Act does not limit a custodian's ability to obtain a court order that:
- a. Specifies that an account belongs to the protected person or principal.
  - b. Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure.
  - c. Contains a finding required by another law.

- 34. Exempts a custodian and its officers, employees and agents from liability for an act or omission done in good faith.
- 35. Acknowledges that uniformity must be considered in the application and construction of this Act.
- 36. Asserts the Act supersedes federal law only as applicable.
- 37. Defines pertinent terms.

**ADDITIONAL INFORMATION**

The Uniform Law Commission (ULC, also known as the National Conference of Commissioners on Uniform State Laws), established in 1892, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

In 2015, the ULC developed the Revised Uniform Fiduciary Access to Digital Assets Act, which extends the traditional power of a fiduciary to manage tangible property to include management of a person's digital assets. To date, 18 other states have introduced version of the Act.

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2467

(Reference to printed bill)

- 1 Page 3, line 10, after "DISCLOSE" insert "TO A DESIGNATED RECIPIENT"
- 2 Lines 30 and 32, after "FIDUCIARY" insert "OR DESIGNATED RECIPIENT"
- 3 Line 33, after "FIDUCIARY'S" insert "OR DESIGNATED RECIPIENT'S"
- 4 Page 5, line 21, after the first "THE" strike remainder of line
- 5 Line 22, strike "USER" insert "USER'S DIGITAL ASSETS"
- 6 Page 7, line 44, after "FIDUCIARY'S" insert "OR DESIGNATED RECIPIENT'S"
- 7 Page 8, line 4, after "3." insert "IN THE CASE OF A FIDUCIARY,"
- 8 Amend title to conform

KATE BROPHY MCGEE

2467BROPHY MCGEE  
02/11/2016  
01:55 PM  
H: PB/ajh

1413ad  
02/10/2016  
1:58 PM  
C: kcb

Adopted <input checked="" type="checkbox"/>	# of Verbals _____
Failed _____	Withdrawn _____
Not Offered _____	Analysts Initials _____

Attachment 4



**ARIZONA HOUSE OF REPRESENTATIVES**  
**Fifty-second Legislature - Second Regular Session**

**ROLL CALL VOTE**

COMMITTEE ON BANKING AND FINANCIAL SERVICES BILL NO. HB 2467

DATE February 16, 2016 MOTION: DPA

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Allen J		✓			
Mr. Espinoza		✓			
Mr. Farnsworth E			✓		
Mrs. Gabaldón		✓			
Ms. McCune Davis		✓			
Mrs. Norgaard		✓			
Mr. Weninger, Vice-Chairman		✓			
Mrs. Brophy McGee, Chairman		✓			
		7	1	0	0

APPROVED:

  
KATE BROPHY MCGEE, Chairman  
JEFF WENINGER, Vice-Chairman

  
COMMITTEE SECRETARY

ATTACHMENT 5



# HOUSE OF REPRESENTATIVES

HB2555

judgment liens; recorded information statement  
Prime Sponsor: Representative Weninger, LD 17

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X Committee on Banking and Financial Services

Caucus and COW

House Engrossed

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## OVERVIEW

HB 2555 prescribes the requirements to perfect a lien against real property.

## PROVISIONS

1. Stipulates that a certified copy of a judgment requiring the payment of money and a separate information statement must be recorded with the county recorder in order for the judgment to become a lien on the real property of the judgment debtor.
2. Clarifies that a judgment requiring the payment of money does not become a lien on real property until the separate information statement is attached to the judgment being recorded.
  - a. States the current required items in the information statement are the minimum requirements.
3. Clarifies that a judgment that does not have the information statement attached does not become a lien on real property until the judgment creditor records an amendment to the recorded judgment containing the information statement.
4. Removes the provision relating to the priority of the judgment.

## CURRENT LAW

A judgment creditor may file and record a certified copy of a court judgment in the office of the county recorder in each county where the judgment creditor desires the judgment to become a lien on the real property of the judgment debtor. On recording, the judgment becomes a lien for a period of five years from the date it is given (A.R.S. § 33-961).

Additionally, a judgment or any renewal that requires the payment of money and that is recorded must be attached to a separate information statement that contains:

- 1) The correct name and last known address of each judgment debtor;
- 2) The name and address of the judgment creditor;
- 3) The amount of the judgment or decree as entered or as most recently renewed;
- 4) If the judgment debtor is a natural person, the judgment debtor's social security number, date of birth and driver license number; and
- 5) Whether a stay of enforcement has been ordered by the court and the date the stay expires.

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO H.B. 2555  
(Reference to printed bill)

1 Page 1, between lines 27 and 28, insert:

2 "D. NOTWITHSTANDING SUBSECTIONS A AND C OF THIS SECTION, A CIVIL  
3 JUDGMENT IN FAVOR OF THIS STATE IS EXEMPT FROM THE REQUIREMENT TO RECORD AN  
4 INFORMATION STATEMENT AS PRESCRIBED IN SECTION 33-967 AND BECOMES A LIEN ON  
5 THE REAL PROPERTY OF THE JUDGMENT DEBTOR WHEN IT IS RECORDED IN THE OFFICE OF  
6 THE COUNTY RECORDER. THIS SUBSECTION APPLIES RETROACTIVELY TO ALL JUDGMENTS  
7 IN FAVOR OF THIS STATE WITHOUT REGARD TO WHEN THE JUDGMENT WAS RECORDED."

8 Line 36, strike "AT A MINIMUM"

9 Page 2, after line 26, insert:

10 "E. A CIVIL JUDGMENT IN FAVOR OF THIS STATE IS EXEMPT FROM THIS  
11 SECTION. THIS SUBSECTION APPLIES RETROACTIVELY TO ALL JUDGMENTS IN FAVOR OF  
12 THIS STATE WITHOUT REGARD TO WHEN THE JUDGMENT WAS RECORDED."

13 Amend title to conform

JEFF WENINGER

2555JW.doc  
02/12/2016  
04:22 PM  
C: MYR

Adopted ☒ # of Verbals \_\_\_\_\_  
Failed \_\_\_\_\_ Withdrawn \_\_\_\_\_  
Not Offered \_\_\_\_\_ Analysts Initials \_\_\_\_\_

Attachment 7

**ARIZONA HOUSE OF REPRESENTATIVES**  
**Fifty-second Legislature - Second Regular Session**

**ROLL CALL VOTE**

COMMITTEE ON BANKING AND FINANCIAL SERVICES BILL NO. HB 2555

DATE February 16, 2016 MOTION: DPA

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Allen J		✓			
Mr. Espinoza		✓			
Mr. Farnsworth E		✓			
Mrs. Gabaldón		✓			
Ms. McCune Davis		✓			
Mrs. Norgaard		✓			
Mr. Weninger, Vice-Chairman		✓			
Mrs. Brophy McGee, Chairman		✓			
		8	0	0	0

APPROVED:

  
KATE BROPHY MCGEE, Chairman  
JEFF WENINGER, Vice-Chairman

  
COMMITTEE SECRETARY

ATTACHMENT 8



# HOUSE OF REPRESENTATIVES

HB 2592

nonprofit corporations; electronic voting  
Prime Sponsor: Representative Ackerley, LD 2

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X Committee on Banking and Financial Services

Caucus and COW

House Engrossed

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## OVERVIEW

HB 2592 allows a written ballot to be delivered to the members of a non-profit corporation through an online voting system.

## PROVISIONS

1. Authorizes a written ballot to be delivered through an online voting system to the members of a non-profit corporation provided that a notice is sent to members stating the vote will be conducted by electronic means.
2. Requires the online voting system to do all of the following:
  - a. Verify the member's identity.
  - b. Verify the validity of each electronic vote.
  - c. Transmit a receipt to each member who casts an electronic vote.
  - d. Store electronic votes for recount, inspection and review purposes.

## CURRENT LAW

Pursuant to A.R.S. § 10-3708 members of a non-profit organization may take action without a meeting if the corporation delivers a written ballot to every member entitled to vote on an issue. The written ballot must set forth and provide an opportunity to vote for or against each proposed action.

In order for a proposed issue to be approved by a written ballot: 1) the number of votes cast by ballot must equal or exceed the quorum required to be present at a meeting authorizing the action, and 2) the number of approvals must equal or exceed the number of votes needed to approve the proposed issue at a meeting.

# ARIZONA HOUSE OF REPRESENTATIVES

## Committee Report

February 16, 2016


MR. SPEAKER:

Your COMMITTEE ON BANKING AND FINANCIAL SERVICES has had under consideration

HOUSE BILL 2592 and respectfully recommends:

it do pass

LCS



KATE BROPHY MCGEE, Chairman  
JEFF WENINGER, Vice Chairman

Attachment 10

**ARIZONA HOUSE OF REPRESENTATIVES**  
**Fifty-second Legislature - Second Regular Session**

**ROLL CALL VOTE**


COMMITTEE ON BANKING AND FINANCIAL SERVICES BILL NO. HB 2592

DATE February 16, 2016 MOTION: DP

	PASS	AYE	NAY	PRESENT	ABSENT
Mr. Allen J		✓			
Mr. Espinoza		✓			
Mr. Farnsworth E		✓			
Mrs. Gabaldón		✓			
Ms. McCune Davis		✓			
Mrs. Norgaard		✓			
Mr. Weninger, Vice-Chairman		✓			
Mrs. Brophy McGee, Chairman		✓			
		8	0	0	0

APPROVED:

  
KATE BROPHY MCGEE, Chairman  
JEFF WENINGER, Vice-Chairman

  
COMMITTEE SECRETARY

ATTACHMENT 11

**ARIZONA STATE LEGISLATURE**  
Fifty-second Legislature - First Regular Session

**COMMITTEE ATTENDANCE RECORD**

COMMITTEE ON BANKING AND FINANCIAL SERVICES

CHAIRMAN: Kate Brophy McGee VICE-CHAIRMAN: Jeff Weninger

DATE	1/19 /16	2/2 /16	2/9 /16	2/16 /16	/16
CONVENED	2:37 p.m.	2:01 p.m.	3:58 p.m.	4:28 p.m.	m
RECESSED					
RECONVENED					
ADJOURNED	3:14 p.m.	3:35 p.m.	3:46 p.m.	4:56 p.m.	
MEMBERS					
Mr. Allen J	✓	✓	✓	✓	
Mr. Espinoza	✓	✓	✓	✓	
Mr. Farnsworth E	✓	✓	✓	✓	
Mrs. Gabaldón	✓	✓	✓	✓	
Ms. McCune Davis	✓	✓	✓	✓	
Mrs. Norgaard	✓	✓	✓	✓	
Mr. Weninger, Vice-Chairman	✓	✓	✓	✓	
Mrs. Brophy McGee, Chairman	✓	✓	—	✓	

✓

Present

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Absent

exc

Excused